

DRAFT
DEPARTMENT OF INTERIOR DRAFT TRIBAL CONSULTATION POLICY
MAKAH TRIBAL COUNCIL BRIEFING MEMO

Date: March 14, 2011

PURPOSE

1) To identify opportunities to enhance Tribal Consultation policies in the context of the development and implementation of the Department of Interior Draft Tribal Consultation Policy; 2) To ensure that the consultation policy addresses the means to determine impacts of existing and future federal actions on Indian treaty rights and resources as well as other tribal interests; 3) To assist in establishing responsible DOI Bureaus and Offices ensure that sufficient access and resources will be made available for meaningful tribal participation throughout the consultation policy development and implementation process; 4) To support these DOI policy enhancements towards the establishment of DOI/Bureau counterparts to Cabinet level Tribal Liaison to act as Trust Agents in introducing sovereign tribal interests; and 5) To emphasize the need to coordinate a multi-departmental consultation policy that will inform and support future policy decisions as they relate to tribal sovereign interests.

BACKGROUND

The Makah people have lived on the northwest edge of the Olympic Peninsula, where the Pacific Ocean enters the Strait of Juan de Fuca, for thousands of years. Our cultural identity, economy and subsistence have always been derived from the ocean. In 1855, our ancestors signed a treaty with the United States in which we ceded most of our lands but retained the rights of fishing, whaling and sealing at all of our “usual and accustomed grounds and stations.”

Under the treaty and subsequent obligation of federal trust responsibility, the United States has a legal duty to consult with tribal governments to protect treaty resources, as it develops and implements policies that may impact our treaty rights. These legal obligations are reflected in Executive Orders requiring tribal consultation. The Federal Courts recognize tribal governments as “co-managers” of shared marine resources, acknowledging tribal co-ownership of such resources.

The Makah Tribal Council (MTC) recognizes that by participating in drafting the current DOI Tribal Consultation Policy we can increase the effectiveness of a national tribal policy framework to resolve issues associated with the ever-increasing demands on Indian Tribal Governments. The MTC is eager to work with White House, Congress, the Department of Interior and other Federal and State officials to ensure that tribal treaty rights and trust resources are accounted for in the executive, legislative, rule making and planning processes to maximize opportunity and minimize conflicts with tribal governments.

In summary, to the extent consistent with federal law, the DOI implements its trust and consultation responsibility toward the Makah Tribal Council by:

- Protecting and conserving (prevent the extinction of) treaty trust resources;
- Protecting the exercise of treaty rights by the Makah Tribal Council;
- Supporting the development of and deference to tribal treaty resource management plans; and
- Consulting with the Makah Tribal Council on a government-to-government basis when proposing to take an action that may affect treaty resources or tribal treaty rights or resources of cultural or historical significance.

In addition, bilateral treaties and agreements exist with Canada pertaining to the management of marine resources and vessel traffic in our region, underscoring the complexity of the planning process here. We have been actively involved in the negotiation and implementation of those treaties and agreements.

GOALS

To contribute to the success of the Presidential Tribal Consultation Initiative by:

- Affirming the MTC's desire to be a strong partner with the Administration in the development of Tribal Consultation Policy and in the development of multi-agency Consultation Policies and Procedures;
- Reviewing some of the experiences the MTC has had with tribal consultation including: cultural resource/harvest management, marine transportation safety issues, siting of underwater cables, wave energy, Naval training areas and the Olympic Coast National Marine Sanctuary in the Makah Treaty Area;
- Identification of opportunities to clarify resource protection and management authorities through partnership between the MTC and the federal government;
- Identification of opportunities to expand DOI Tribal Consultation to include DOI/Bureau counterparts to Cabinet level Tribal Liaisons.
- To secure a tribal equity with Cabinet level Departments through placement of DOI/Bureau counterparts to Departmental Tribal Liaisons and development of a multi-departmental consultation policy.

Examples of MTC Consultation Initiatives with Federal Departments

For example (but not exclusive): The EPA and Coast Guard have housed their tribal consultation program within their respective International Assistance Programs. While the DHS has yet to finalize their consultation policy the establishment of a Tribal Liason in District 13 has been appreciated. Unlike EPA, the CG has not appropriated funding for tribal participation in their rulemaking and administrative efforts. Establishing a Bureau of Indian Affairs counter-part to the Department/Agency level Tribal Liaisons will enhance meaningful Tribal Consultation. By identifying the strengths and weaknesses of these two agencies' approach to consultation we hope to apply lessons learned to other departments.

Department of Interior Discussion of Tribal Issues/Initiatives

BIA's Tribal Consultation-Strategic Planning Policy

BIA/MTC Tenyo Maru oil spill Natural Resource Damage Assessment,

DOI Climate Change funding and BIA share

OUTCOME: To enhance consultation effectiveness; Address BIA Climate Change funding disparity with-in DOI.

DHS-Coast Guard Discussion of Tribal Issues/Initiatives

DHS/USCG - Tribal Consultation Policy and CG Rule Making

USCG – Regional Response Team/NWAC- Tribal interests introduced into NW Area Plan, Neah Bay Oil Spill Task Force, fishing vessel spill response training, Towboat Lanes, Common Operational Understanding – VTOS, Sector Puget Sound-High Volume Port Line/Mission of CG Station Neah Bay, International Assistance Program, MTC conditional approval of Oil Spill Dispersant in Coast Guard District 13, and rejection of request for Gulf Coast SONS consultation.

OUTCOME: Coast Guard Appropriation for Improved Tribal Coordination and MOA development. Enhancement of CG Station Neah Bay mission.

EPA Discussion of Tribal Issues/Initiatives

Brownsfield – Response capacity building/ RRT

Puget Sound Partnership – Juan de Fuca Action Area and Oil Spill Work Group.

OUTCOME: Continued funding of Tribal Response Program and Puget Sound Partnership tribal capacity grants. Continue PSP Oil Spill Workgroup.

Navy/Army Corps of Engineers

Corps - Dredging of channel at Neah Bay Harbor to accommodate additional spill prevention and response assets and economic development

Navy - Tribal Consultation Policy, SupSalv equipment in Neah Bay, enhancing Neah Bay response tug, Navy/Tribal Council and oil spill work group

OUTCOME: Oversight of Corps feasibility study for harbor development and award of TIGER II Infrastructure Improvement grant. Establish protocols to transfer Navy SupSalv spill response and salvage equipment to Coast Guard Station Neah Bay with MOA for use by Makah.

Department of Commerce/NOAA Discussion of Tribal Issues/Initiatives

Dept. of Commerce – Mentor training for tribal members on Response Tug

NOAA – Resource co-management-Funding of the Marine Ecosystem Initiative.

NMSP- Reauthorization of the NMSA, Olympic Coast NMS, SAC v IPC, Wave energy development within Sanctuary.

OUTCOME: Funding for Ecosystem Initiative and Rescue Tug Mentor Training Program. Tribal sovereign interests preserved in Sanctuary Reauthorization.

Expected Issues of Interest/Controversial Topics:

- 1) Challenges in coordinating multi-departmental consultation process
- 2) Need to have a tribal program in each department (eg Int'l Affairs) as well as counterpart in BIA.
- 3) Need to establish departmental funding levels to maintain Trust Responsibility and Tribal Consultation goals.